

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

WORLD PUBLISHING COMPANY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 09-CV-574-TCK-TLW
)	
(1) UNITED STATES DEPARTMENT)	
OF JUSTICE, and its subordinate)	
bureau, UNITED STATES)	
MARSHAL SERVICE,)	
)	
Defendant.)	

COMPLAINT

World Publishing Company, publisher of the *Tulsa World* newspaper (“Tulsa World”), submits this Complaint against the United States Department of Justice, and its subordinate bureau, the United States Marshal Service, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, seeking to compel the release of booking photographs of various individuals who are under indictment, awaiting trial on federal charges and who have been arraigned in the United States District Court for the Northern District of Oklahoma (hereinafter booking photographs shall be referred to as “Mug Shots”). In support of this Complaint, the Tulsa World alleges as follows:

1. World Publishing Company is an Oklahoma corporation that is the publisher of the *Tulsa World*, a newspaper of general circulation in the State of Oklahoma, and is a “news media” organization under the Freedom of Information Act (sometimes “FOIA”).

2. The United States Department of Justice is a United States government agency with a subordinate bureau of the United States Marshal Service established pursuant to 28 U.S.C. §561.

3. The United States Marshal Service (“U.S. Marshal Service”) is charged with the custody of persons who have been charged with a crime in federal court. In the United States District Court of the Northern District of Oklahoma, the custody of the prisoners is outsourced to the Tulsa County Jail facility. Federal detainees are held by the Tulsa County Sheriff under contractual arrangements between the Tulsa County Sheriff and the U.S. Marshal Service (“Service Agreements”). As part of the Service Agreements, Mug Shots are made of the federal detainees.

4. In August, 2008, the Tulsa World sought the Mug Shots for Zobair Baig, Estella Bonilla, Cecilia Bonilla, Francisca Bonilla, Kimberly Chancellor and Larry Wayne Barnes, as well as future detainees held by the U.S. Marshal Service (“Detainees”).

5. The Detainees and the Mug Shots of the Detainees were in possession of the Tulsa County Sheriff but were not released under the Freedom of Information Act or otherwise made public or an open record. The U.S. Marshall Service takes the position that Mug Shots are not released under the Freedom of Information Act in any court other than the Sixth Circuit Court of Appeals. The U.S. Marshall Service advised the Tulsa World that

“as for the decision established by the Court of Appeals for the Sixth Circuit in Detroit Free Press, Inc. v. Department of Justice, 73 F.3d 93 (6th Cir. 1996), which held that disclosure of Mug Shots of ‘indicted individuals who had already appeared in court,’ and had their names divulged did not constitute an unwarranted invasion of privacy, please be

advised that the Department of Justice is not bound by this decision outside of the Sixth Circuit.

6. On or about August 26, 2008, the Tulsa World, pursuant to 5 U.S.C. § 552B, made a formal written Freedom of Information Act request of the U.S. Marshal Service for the Mug Shots of the Detainees identified above. A full, true and correct copy of the Freedom of Information Act request is attached as Exhibit “1.”

7. The U.S. Marshal Service denied the request citing Exemption 7C of the Freedom of Information Act, 5 U.S.C. § 552B. A full, true and correct copy of the denial is attached as Exhibit “2.” The U.S. Marshal Service also stated that Exemption 7C allows an agency to withhold records or information compiled for law enforcement purposes to the extent that access could reasonably be expected to constitute an unwarranted invasion of personal privacy.

8. The Tulsa World appealed that denial and exhausted its administrative remedy. A full, true and correct copy of the appeal is attached as Exhibit “3.”

9. On or about July 22, 2009, the Department of Justice, U.S. Marshal Service, denied the appeal for access to the Mug Shots of the six Detainees. A full, true and correct copy of the denial is attached as Exhibit “4.” The denial of the appeal affirmed the U.S. Marshal Service’s denial of the Tulsa World’s FOIA request. In denying the appeal, the Department of Justice (“DOJ”) asserts the U.S. Marshal Service properly withheld this information in its entirety because it is protected from disclosure pursuant to 5 U.S.C. § 552(b)(7)(c). The DOJ also added that this provision concerns records of information compiled for law enforcement purposes and the release of such

information could reasonably be expected to constitute unwarranted invasion of personal privacy of third parties.

10. The Tulsa World concedes that the Mug Shots, to the extent maintained, may in fact constitute law enforcement records. Nonetheless, the Mug Shots are of Detainees who are charged with a crime, arrested and are in custody of the Tulsa County Sheriff under the Service Agreements, have been arraigned and are pending trial. In all respects, the name of the person, the crime charged, and the court records of that person (unless sealed by an Order of the Court) have already been disclosed as public information, including the specific allegations in the indictment or information. The only thing that has not been disclosed is the actual physical appearance of the person charged with the crime as reflected in the Mug Shot. The Tulsa World also seeks the Mug Shots of persons who are arrested on state charges, but who have a federal hold on them for some reason such as a hold for immigration officials. Mug Shots of persons subject to a federal hold are also not disclosed and should be disclosed.

11. The Tulsa World contends that, in this case, the limited scope of the release of the Mug Shots does not constitute an unwarranted invasion of the Detainees' privacy. The Tulsa World, as a member of the news media, on its own behalf and as a representative serving the public, has a strong public interest in obtaining the Mug Shots and future Mug Shots of Detainees. The Tulsa World submits that the Mug Shots are matters of public interest and that they do not constitute an unwarranted invasion of personal privacy of the current or future Detainees. Under Oklahoma law, all other Mug Shots of persons held by a county sheriff are open, public information, and all records are

released for public review without restriction, including all other persons in the custody of the Tulsa County Sheriff.

12. Mug Shots are of public interest and do not constitute an unwarranted invasion of the Detainees' privacy. In support thereof, the Tulsa World shows the Court that:

A. Mug Shots of individuals who have been charged, but become a fugitive for some reason, are released and used to identify that person by the U.S. Marshal Service.

B. The U.S. Marshal Service releases and places Mug Shots on its website when a fugitive who was a Detainee has been captured, apparently as a way of showing that the U.S. Marshal Service has successfully captured a fugitive.

C. Mug Shots may also be used in prosecution of that person.

D. Mug Shots have a tendency to show favorable or unfavorable treatment of a Detainee as to whether or not the person was abused when he was arrested, or tend to disprove allegations of abuse.

E. Mug Shots tend to show fair versus unfair or disparate treatment of various Detainees such as someone who may be given preferential or poor treatment.

F. Mug Shots may reflect the race, sex, and/or ethnic status.

G. Mug Shots tend to show whether racial, sexual or ethnic profiling has occurred from the appearance of the Detainees.

H. Mug Shots reveal the outward appearance of the person and may show whether the person appears to be in good health, poor health or appears to be competent or incompetent as shown by his general outward appearance.

I. The use of Mug Shots is important for the purpose of identification and serves the public's legitimate interest as to how that person appears at the time of the Mug Shot when compared to the person's appearance at trial or in earlier photographs.

J. Mug Shots serve to identify that person and may solve other crimes or assist citizens or public officials in solving other crimes as persons may come forward with information concerning the person as a result of the Mug Shots.

K. Mug Shots would help the public recognize that person if an escape occurs, he jumps bail, or other similar problems occur.

L. Mug Shots would tend to disclose unfair treatment or favoritism of a person of wealth and power versus the treatment of an ordinary person.

M. Mug Shots may, in fact, show the seriousness with which that person took the charges. If the Mug Shot discloses that the person is laughing or believes the charges are silly or ridiculous, that may be disclosed by the Mug Shot.

13. For these reasons and other reasons, the public has a legitimate interest in the appearance of the Detainees as shown in the Mug Shots, and the Tulsa World submits that disclosure of the Detainees' Mug Shots is thus warranted.

14. The privacy interest in a Mug Shot of a Detainee charged in a federal court with a crime is necessarily limited. A great deal of information has already been released, such as the name of the person, the home city and/or street address, the alleged crime, the alleged elements of the crime, the plea, the request for release, the bond, other crimes he has committed, risk of flight, and other information used in the criminal or detention proceedings.

15. The Freedom of Information Act recognizes the news media has a special status and serves the public good as the fees charged by the U.S. Marshal Service for news media requests are limited. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

16. Tulsa World submits that it has standing for itself and as a representative of the public to make this request for disclosure of the Mug Shots of the federal Detainees as the public is not likely to be able to have the time nor the financial resources to incur the expense to pursue a Freedom of Information Act request, appeal, and complaint to seek the disclosure for this information.

17. This matter is not moot as this denial under FOIA is likely to reoccur, and Tulsa World seeks all future Mug Shots of Detainees held by the U.S. Marshal Service in the Northern District of Oklahoma.

WHEREFORE, the Tulsa World prays that the Court determine that the disclosure of the six Detainees' Mug Shots, the Mug Shots of future Detainees held in the Tulsa County Jail and those persons held on state and federal charges does not constitute an unwarranted invasion of personal privacy, and such Mug Shots should be ordered to be released to the Tulsa World and the public to the extent that they properly request those Mug Shots under the Freedom of Information Act. The Tulsa World further prays

that it be granted its attorney's fees and costs pursuant to the Freedom of Information Act for pursuing this claim, and such other and further relief as the Court may deem just and equitable.

Respectfully Submitted,

/s/ J Schaad Titus

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